FILED
JAN 28 1953
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

No. 571

HARRY I. MATTSON, CHARLES V. WELLNER AND WILLIAM A. KAFFER, INDIVIDUALLY AND AS TRUSTEES UNDER AND BY VIRTUE OF THE TERMS AND PROVISIONS OF THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, AND WALSH OIL COMPANY, INCORPORATED, A CORPORATION,

*Respondents.*

**PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.**

JAMES E. MARKHAM,
JAMES W. FAULKNER,
JEREMIAH BUCKLEY,
THOMAS P. FAULKNER,
*Attorneys for Petitioners.*

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

## INDEX TO PETITION AND BRIEF.


| | PAGE |
|---|---|
| Introductory Prayer | 1 |
| Opinions Below | 2 |
| Jurisdictional Statement | 2 |
| Statement of Facts | 2 |
| Question Presented | 4 |
| Statutes Involved | 5 |
| Reasons for Granting Writ | 6 |
| Argument | 8 |
| Brief in Support of Petition: | |
| I. The District Court should restrain by injunction an action brought in the State Court which has as its object to nullify the Plan of Reorganization adopted and confirmed in the Federal Court under Section 77B of the Bankruptcy Act | 8-11 |
| II. The Court of Appeals ignored the sole question of the jurisdiction of the State Court to entertain a suit to nullify the Federal decree in Bankruptcy by stating that a suit was brought in the State Court without stating that the nature and purpose of the suit was to nullify the Federal decree and to abrogate the plan of reorganization created thereby | 11-14 |
| III. The Court of Appeals misconceived the sole question presented by stating and deciding that the Federal District Court had no jurisdiction over the affairs of the reorganized corporation, when in fact the question was whether the State Court had jurisdiction of the suit filed therein, and by its failure to state the complete facts and real question presented, deprived the petitioners of due process of law, under the Fifth Amendment to the United States Constitution | 14-15 |
| Conclusion | 16 |
| Prayer | 16 |

CITATIONS.

Continental Illinois v. National Bank and Trust Co., 294 U. S. 648 ..... 10
Heard v. Peerless Cement Corp., 329 Mich. 631 ..... 9
Holmes v. Rowe, 97 F. 2d 537 ..... 9
In re Ambassador Hotel Corporation, 124 F. 2d 435 ... 10
In re Argyle-Lake Shore Corporation, 98 F. 2d 372 ... 11
In re Corona Radio and Television Corporation, 102 F. 2d 959 ..... 9, 10
In re Hermitage Building Corporation, 100 F. 2d 597. 9
In re Higbee Co., 164 F. 2d 426 ..... 9
In re Leight & Co., 139 F. 2d 313 ..... 11
In re Pittsburg Terminal Coal Corp., 183 F. 2d 520 ... 9
In re Tom Moore Distillery Co., 52 F. Supp. 938 ..... 9
In re Wedgwood Hotel Company, 125 F. 2d 327 ..... 9
Local Loan Co. v. Hunt, 292 U. S. 234 ..... 10
Magidson v. Duggan, 180 F. 2d 473 ..... 9
Metropolitan Playhouses, Inc. v. Central Hanover Bank and Trust Co., 71 N. Y. Supp. 2d 88 ..... 9
National Clay Products Co., 40 F. 2d 617 ..... 13
Phipps v. Chicago R. I. & P. Ry. Co., 284 F. 945 ..... 9
Shores v. Hendy Realization Co., 133 F. 2d 738 ..... 9
Steelman v. All Continent Corp., 301 U. S. 278 ..... 10
Stoll v. Gottlieb, 305 U. S. 165 ..... 9
Williams v. Austrian, 331 U. S. 642 ..... 9
Young v. Higbee Co., 324 U. S. 204 ..... 9

STATUTES CITED.

Title 11 U. S. C. A. Section 11 a, (15); b ..... 5
Title 11 U. S. C. A. Section 511 ..... 5
Title 28 U. S. C. A. Section 1651 (a) ..... 5
Title 28 U. S. C. A. Section 2283 ..... 6

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

No. .....

HARRY I. MATTSON, CHARLES V. WELLNER AND WILLIAM A. KAFFER, INDIVIDUALLY AND AS TRUSTEES UNDER AND BY VIRTUE OF THE TERMS AND PROVISIONS OF THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, AND WALSH OIL COMPANY, INCORPORATED, A CORPORATION,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

*To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:*

Your petitioners, Harry I. Mattson, Charles V. Wellner and William A. Kaffer, plaintiffs below, respectfully pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit

entered on November 26, 1952. The Court of Appeals affirmed the judgment of the United States District Court for the Northern District of Illinois, Eastern Division, denying the petitioners' motion for an injunction to stay proceedings instituted by the respondents in the State court and granting the respondents' motion to dismiss the complaint. A petition for rehearing was filed by the petitioners in the Court of Appeals on December 8, 1952; it was denied on January 13, 1953.

## OPINIONS BELOW.

The original opinion of the Court of Appeals for the Seventh Circuit, dated November 26, 1952, and its supplemental order, dated January 13, 1953, are both as yet unreported. (R. 156-163-187.)

## JURISDICTION.

The decision of the Court of Appeals was entered on November 26, 1952. (R. 162.) A timely petition for rehearing, filed December 8, 1952 (R. 163-178), was denied on January 13, 1953. (R. 187.) The jurisdiction of this Court is invoked under 28 U. S. C., Section 1254 (1) (62 Stat. 928).

## STATEMENT OF FACTS.

James G. Heggie & Sons was reorganized in the District Court under Section 77B of the Bankruptcy Act, and a new company, known as the James G. Heggie Manufacturing Company, was created, and five trustees were appointed by the District Court to carry out the plan of reorganization which had been adopted and confirmed. Two of the five trustees have heretofore resigned, and the remaining three trustees are the petitioners herein.

The trustees have been operating the reorganized company since 1940. The decree of reorganization vested in the legal title and the sole power to vote the stock in the trustees, for the benefit of all the beneficiaries thereunder, and certificates of beneficial interest were issued to secured and unsecured creditors and to preferred and common shareholders of the debtor corporation. (R. 25-37.)

The respondents intervened as plaintiffs in a suit filed in the District Court on November 20, 1950, charging fraud and mismanagement on the part of the trustees. That case was diligently litigated up to December 14, 1951, at which time, and after the court had set the date for final hearing on the merits of the case, the respondents dismissed their suit.

Six weeks after such voluntary dismissal, the respondents filed a suit in the State Court of Illinois, making the same charges, and praying a temporary and permanent injunction restraining the trustees from (1) filling vacancies in the board of trustees; (2) selling the assets of the corporation other than in the ordinary course of business; (3) issuing or disposing of the 6,400 shares of stock now held by the corporation. The complaint further prayed that a receiver be appointed to take over the assets and the operation of the corporation for the purpose of liquidating and dissolving the same; that the trust be declared ended, and the shares of the corporation be delivered to the holders of the certificates; that the trustees, directors and officers be removed; that the holders of the trust certificates be given an opportunity to vote on the voluntary liquidation and dissolution of the corporation; that an accounting be had and that judgment be entered against the trustees individually for any amounts found due from them, and that the owners of trust certificates for the First and Second Preferred shares, other than the plaintiffs, be given the

opportunity to receive the par value of their shares plus all accumulated dividends, and that the trust be ordered to be fulfilled, terminated and ended. (R. 39-63.)

The petitioners filed a suit for an injunction in the District Court (R. 3-15), the respondents filed a motion to dismiss. The District Court denied the motion for an injunction and granted the motion to dismiss, and dismissed the case. (R. 93-95.) As grounds for its action, the District Court, said that the final decree of reorganization terminated the jurisdiction of the court over the debtor and its successors; that Title 28 U. S. C. Sec. 1651 (a) does not confer jurisdiction on the District Court, and that as the parties all appear to be residents of the State of Illinois, there was no diversity of citizenship, and that no other ground for the Court's jurisdiction had been alleged or appear to exist. From that order, the petitioners appealed.

## QUESTION PRESENTED.

Should the District Court restrain by injunction a suit started in the State Court by the holders of certificates of beneficial interest in a corporation reorganized in the District Court under Section 77B of the Bankruptcy Act, when the object of said suit is to nullify the decree of the District Court confirming the plan of reorganization, by praying that the trustees be restrained from doing what the decree of reorganization specifically authorizes and directs them to do, and by seeking the removal of the trustees, officers and directors, and that a receiver be appointed to take over the assets of the corporation for the purpose of liquidating and dissolving the same, and that the trust be declared ended?

## STATUTES INVOLVED.

Title 11 U. S. C. A. Section 11:

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers and during their respective terms, as they now or may be hereafter held to—

(15) Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title; Provided, however, that an injunction to restrain a court may be issued by the judge only;

(b) Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated. May 27, 1938, Chap. 406, Sec. 2, 44 Stat. 662; June 22, 1938, Chap. 575, Sec. 1, 52 Stat. 842.

Title 11 U. S. C. A. Section 511:

Where not inconsistent with the provisions of this chapter, the court in which the petition is filed shall, for the purpose of this chapter, have exclusive jurisdiction over the debtor and its property wherever located. July 1, 1898, Sec. 111, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 884.

Title 28 U. S. C. A. Section 1651:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law. June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, Sec. 90, 63 Stat. 102.

Title 28 U. S. C. A. Sec. 2283:

> A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

## REASONS FOR GRANTING THE WRIT.

### I.

The writ of certiorari should be granted because both the District Court and the Court of Appeals refused to follow the rule repeatedly enunciated by this Court, by various Circuit Courts of Appeals, by District Courts and State Courts that the jurisdiction of the federal bankruptcy courts over a corporation reorganized under Section 77B of the Bankruptcy Act does not terminate with the entry of the final decree in the reorganization proceedings, but that the Court retains jurisdiction over the corporation and its trustees for the purpose of enforcing its decree, preventing interference with the plan, and otherwise aiding in its consummation.

### II.

The Court of Appeals ignored the sole question presented to it for decision by the expedient of stating the allegations of complaint set up by the respondents in the State Court case, without stating the relief prayed by the respondents in the State Court, that relief being that the trustees be restrained from doing what the decree of the District Court specifically authorized and directed them to do, that the trustees, directors and officers of the corporation be removed, that a receiver be appointed to take over

the assets of the corporation for the purpose of liquidating and dissolving the same, and that the trust be declared ended.

III.

The Court of Appeals completely misconceived the question before it when it said: "The sole question presented here is: Did the United States District Court, under the facts and circumstances shown by this record, have jurisdiction to hear and determine the controversy over the affairs of the corporation organized to take over the debtor in the reorganization proceeding?" (R. 158) when in fact the issue was, not whether the District Court had jurisdiction, but rather whether the *State Court* had jurisdiction to afford the relief prayed by the respondents.

## ARGUMENT.

The reasons which impel us to seek this Writ, are not only unprecedented, but are extraordinary. It is unprecedented that both the District Court and the Court of Appeals brushed aside without comment our entire brief of 67 pages devoted to the affirmative of the proposition first above stated: that the District Court should restrain by injunction a suit brought in the State Court against a corporation reorganized and functioning under a decree of the District Court in bankruptcy, and its trustees, which suit had as its object to prevent the trustees from carrying out the express provisions of the plan of reorganization, and seeking the removal of the directors, officers and trustees, the appointment of a receiver to liquidate and dissolve the company, and to end the trust. (R. 61-63.) And it is extraordinary that the Court of Appeals, by the simple device of omitting the one essential fact we contended for, —the lack of jurisdiction in the State Court to entertain the relief prayed for—thereby rewrote the facts to conform to its decision.

In support of the first proposition above, we cited and discussed fifteen cases, and we re-emphasized our position on oral argument, particularly in answer to questions from the bench. Those cases were:

1. Three from the United States Supreme Court, as follows:

*Stoll* v. *Gottlieb*, 1938, 305 U. S. 165 (368 Ill. 88, 12 N. E. 2d 881, reversed).

*Young* v. *Higbee Co.*, 1945, 324 U. S. 204.

*Williams* v. *Austrian*, 331 U. S. 642, 67 S. Ct. 1443, 91 L. Ed. 1718.

2. Three from the United States Court of Appeals for the Seventh Circuit, as follows:

*In re Hermitage Building Corporation,* C. C. A. 7th, 1938, 100 F. 2d 597.

*In re Corona Radio and Television Corporation,* C. C. A. 7th, 1939, 102 F. 2d 959.

*In re Wedgwood Hotel Company,* C. C. A. 7th, 1942, 125 F. 2d 327.

3. Six from other United States Courts of Appeals, as follows:

*Holmes* v. *Rowe,* C. C. A. 9th, 1938, 97 F. 2d 537.

*Magidson* v. *Duggan,* C. C. A. 8th, 1950, 180 F. 2d 473.

*In re Pittsburgh Terminal Coal Corp.,* C. C. A. 3rd, 1950, 183 F. 2d 520.

*Shores* v. *Hendy Realization Co.,* C. C. A. 9th, 1943, 133 F. 2d 738.

*In re Higbee Co.,* 164 F. 2d 426 (1947).

*Phipps* v. *Chicago R. I. & P. Ry. Co.,* C. C. A. 8th, 1922, 284 F. 945.

4. One from a District Court, as follows:

*In re Tom Moore Distillery Co.,* D. C. Ky., 1943, 52 F. Supp. 938.

5. Two from State Courts, as follows:

*Heard* v. *Peerless Cement Corp.,* 1951, 329 Mich. 631, 46 N. W. 2d 411.

*Metropolitan Playhouses, Inc.* v. *Central Hanover Bank and Trust Co.,* 71 N. Y. Supp. 2d 88.

In addition to the above, we also presented to the Court of Appeals the four sections of Congressional Acts hereinbefore set out, and supplemented them with a discussion by the Supreme Court of the United States showing that

such statutes progressively enlarged the jurisdiction of Federal Courts to grant an injunction in the case presented here. Referring to these statutes, the Supreme Court has repeatedly said that, "the power to issue an injunction when necessary to prevent the defeat or impairment of its jurisdiction is * * * inherent in a court of bankruptcy, as it is in a duly established court of equity." Citing, *Steelmen* v. *All Continent Corp.*, 301 U. S. 278, 289, 57 S. Ct. 705, 710, 81 L. Ed. 1085. See, also, *Continental Illinois* v. *National Bank & Trust Co.*, 294 U. S. 648, 675, 55 S. Ct. 595, 605, 79 L. Ed. 1110. That the District Court not only had the power to issue the writ, * * * is amply borne out by the case of *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 239, 240, 54 S. Ct. 695, 697, 78 L. Ed. 1230, 93 A. L. R. 195.

The decision of the Court of Appeals ignored the basic jurisdictional question involved. The Court of Appeals said not one word about the applicability of any of these statutes, nor of the fifteen cases we cited and discussed, with one exception—*In re Corona Radio & Television Corporation*, 102 F. 2d 959 (also cited by the respondents)—which, in four lines, the Court misinterpreted the entire purport of that decision by stating that the entry of the decree of reorganization terminated the jurisdiction of the District Court.

As against the uniform authority marshalled by these petitioners, the respondents relied upon three cases in addition to the *Corona Radio* case above cited, all of which were distinguished in our reply brief, on oral argument, and in our petition for a rehearing. Those cases, with a brief statement of their distinguishing features, were:

*In re Ambassador Hotel Corporation*, 1942, 2 Cir., 124 F. 2d 435, in which the District Court's refusal to enjoin the State Court action was upheld on the ground that the

order of the District Court permitting the State suit to be brought specifically provided that *the issues raised in the action would involve no interference with the District Court's decree confirming the plan of reorganization.*

*In re Argyle-Lake Shore Corporation*, C. C. A. 7th, 1938, 98 F. 2d 372, in which, after the District Court granted an injunction restraining the holders of certificates of beneficial interest from soliciting other owners of certificates to vote for a discontinuance of the trust, the Court of Appeals reversed the District Court on the ground that under the plan of reorganization the holders of the beneficial certificates were specifically authorized to vote every two years on the continuance of the trust, and this carried with it the right to solicit and convince others that the trust should be discontinued.

*In re Leight & Co.*, 1943, C. C. A. 7th, 139 F. 2d 313, in which the Court dealt with a composition agreement, there having been no adjudication of bankruptcy. The judge who wrote that decision specifically stated that the case came up and was decided under former Section 13 of the Bankruptcy Act, which in the meantime had been superseded by the Chandler Act, Chapters 10, 11 and 12, which broadened the powers of the Federal Courts over composition cases where no such powers existed before, and saying, on page 316, "*Whatever the rights of the parties are, they grew out of the consummated composition agreement and not the proceedings in bankruptcy.*" Hence, the *Leight* case ceased as an authority after the statutory change of Section 13.

The second reason advanced in support of our petition for a Writ of Certiorari is most serious and extraordinary. We can understand a court being in error on the law. When there is a conflict of fact, we can understand the court resolving the conflict against us. But, when there is

no issue of fact presented, we cannot understand a misstatement of the admitted facts by the omission of the *one and only fact* upon which our claim for an injunction is predicated.

As the decision of the Court of Appeals now stands, it is consistent with the denial of an injunction in those cases where suit is brought in the State Court against a reorganized corporation but where no attempt is made to change the plan of reorganization as settled by the decree of the District Court. We eliminated those cases at the very beginning of our brief in the Court of Appeals and re-emphasized our position in oral argument. In our brief we made the distinction between *allegations* and *remedy* perfectly clear when we said:

> "The fact that the new corporation was created pursuant to a decree of the District Court does not render it less amenable, in most respects, to the laws of the state wherein it is chartered or is functioning. It must pay taxes to the state; it must submit reports to the proper officers of the state as required by law; it may make contracts or commit torts, and may sue or be sued thereon in the State Courts, and is subject to the judgments or decrees of the courts of the state.
>
> "There are limitations, however, to the orbit of state power, one of which is presented by this appeal: No State Court has any power to entertain any suit, or to enter any judgment or decree, that will change the plan of reorganization, or substitute another plan therefor, or that will interfere with the powers, duties and functions of the Trustees charged with the responsibility of carrying out the plan. This limitation of power does not arise from any conflict in that penumbra where State and Federal power meet, but rather from the very clear-cut fact that all such matters are *res judicata* by the Federal decree."

The respondents, in their answer to petitioners' petition for a rehearing, along with injecting a new and some-

what bizarre note into the science of pleading, acknowledged that there was no dispute about the issues involved in this case when they said:

> "They seek to distinguish between the allegation and the prayer for relief in the complaint filed in the State Court and claim that jurisdiction of the State Court depends upon the prayer for relief and not upon the allegations of the complaint. It is elementary law that jurisdiction is determined from the allegations of the complaint."

It is still more elementary law that the test of determining jurisdiction is not only the nature of the case as made by the complaint, but even more so, by the relief sought. *National Clay Products Co.*, 40 F. 2d 617.

The Court of Appeals, in its decision, evaded that distinction by stating the *charges* made in the State Court while omitting to state the *remedy* sought to be obtained therein. If all that confronted us in the State Court were charges of fraud and mismanagement, or any other breach of contract, or the commission of any tort, there would be no application for an injunction, nor any appeal, nor would we be here seeking the intervention of this Court. We would litigate our case in the State Court. But, the sole basis of our complaint is not the *charges* made, but the *remedy* sought in the State Court. That remedy is:

> "That the trustees be restrained from filling vacancies in the Board of Trustees, from issuing and disposing of 6,400 shares of stock now held by the corporation (both of which things, under the decree of reorganization entered by the District Court, the trustees were specifically authorized to do) (Rec. 30, Par. 11), and praying the removal of the trustees, directors, and officers of the corporation, and the appointment of a receiver to take over the assets of the corporation for the purpose of liquidating and dissolving the same, and that the trust be declared ended." (R. 61-63.)

The failure of the Court of Appeals to state the entire facts, particularly when those omitted form the sole basis of our complaint, is just as much a misstatement as rewriting the facts to support the decision.

This misstatement of facts by the Court of Appeals is all the more inexcusable since there is no issue of fact involved. The case came up on the granting of the motion of the respondents to dismiss the complaint for an injunction and thereby the facts alleged in our complaint were admitted. We cannot anticipate or prepare for a change by the Court in the admitted facts. We do not feel that this Court will tolerate any such extraordinary misstatement and evasion as that. We have a right to have the ground of our appeal examined and ruled upon.

In support of our third reason, above stated, for granting the Writ: The Court of Appeals stated that the sole question presented was: Did the *United States District Court,* under the facts and circumstances shown by this record, have jurisdiction to hear and determine the controversy over the affairs of the corporation organized to take over the debtor in a reorganization proceeding?

The sole question presented to the Court of Appeals was nothing of the kind, either as a matter of law or as a matter of fact. There was no question presented to the Court of Appeals as to whether the *District Court* had jurisdiction to determine a controversy over the affairs of the corporation. There was no controversy over the affairs of the corporation before the District Court. On the contrary, the sole question correctly stated and presented to the Court of Appeals was:

> Did the District Court err in refusing to restrain by injunction a suit started in the State Court against the trustees of a corporation reorganized under Section 77A and 77B charging acts of waste, mismanage-

ment and fraud on the part of the trustees, directors and officers of the corporation, and praying that the trustees be restrained from filling vacancies in the Board of Trustees, from issuing and disposing of 6,400 shares of stock now held by the corporation (both of which things, under the decree of reorganization entered by the District Court, the trustees were specifically authorized to do), and praying the removal of the trustees, directors and officers of the corporation, and the appointment of a receiver to take over the assets of the corporation for the purpose of liquidating and dissolving the same, and that the trust be declared ended?

To permit the Court of Appeals to re-frame the question to suit itself would be to permit it, by the same device, to nullify any decree entered in a reorganization proceeding. If permitted, the results of such conduct are appalling. By the same procedure, a decree entered in a bankruptcy proceeding would be valid and subsisting only so long as the owners of the majority of the beneficial certificates desired, or so long as they refrained from attacking the decree in the State Court. The decrees of the Federal Courts would be rendered subject to review by the Courts of the State by which the plan of reorganization could be rejected, terminated or nullified, and another and different plan substituted therefor, and the permanence and security of decrees rendered in bankruptcy proceedings, as *res judicata* of the rights of the parties thereto and their assignees, would effectively be set at naught.

The petitioners further state that the failure of the Court of Appeals to hear and determine the question presented to it for review was a denial of due process of law to the petitioners herein under the Fifth Amendment to the Constitution of the United States which provides "nor shall any person * * * be deprived of life, liberty or property, without due process of law."

## CONCLUSION.

We respectfully urge that this Court should assert and vindicate the supremacy of the Federal Courts over State Courts in bankruptcy reorganization proceedings whenever necessary and to protect the rights of individual minority stockholders menaced by the personal aggression of those who have recently acquired a majority stock interest and whose ulterior motive to take possession of the rejuvenated, prospering and rehabilitated company (R. 119-121) is masked under the statement of facts as recited in the decision, said motive being clear and apparent from a mere reading of the prayer for relief sought in the case instituted in the State Court. (R. 61-63.)

For the reasons stated, it is respectfully submitted that this petition should be granted.

Respectfully submitted,

JAMES E. MARKHAM,
1100—Shoreham Bldg.,
Washington 5, D. C.,
JAMES W. FAULKNER,
THOMAS P. FAULKNER,
5 E. Van Buren St.,
Joliet, Illinois.,
JEREMIAH BUCKLEY,
180 W. Washington St.,
Chicago, Illinois,
*Attorneys for Petitioners.*

14

Office - Supreme Court, U.S.
FILED
FEB 26 1953
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

## No. 571

HARRY I. MATTSON, CHARLES V. WELLNER and WILLIAM A. KAFFER, Individually and as Trustees Under and by Virtue of the Terms and Provisions of the Decree of the District Court of The United States for the Northern District of Illinois, Eastern Division,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, and WALSH OIL COMPANY, INCORPORATED, a Corporation,

*Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit.

**BRIEF FOR THE RESPONDENTS IN OPPOSITION.**

HUBERT L. WILL
Attorney for Respondents

NELSON, BOODELL & WILL
105 S. LaSalle Street
Chicago 3, Illinois
Of Counsel

The Scheffer Press, Inc.—ANdover 3-6850

# INDEX.


| | PAGE |
|---|---|
| Opinion Below | 1 |
| Jurisdiction | 1 |
| Question Presented | 2 |
| Statutes Involved | 2 |
| Statement of Facts | 2 |
| Summary of Argument | 4 |
| Argument | 6 |
| Conclusion | 9 |
| Appendix | 1a, 2a |


## CITATIONS.

CASES:


| | |
|---|---|
| Ambassador Hotel Corp., In re, 2 Cir. 124 F. 2d 435 | 6 |
| Argyle-Lake Shore Corp., In re, 7 Cir. 98 F. 2d 372 | 6 |
| Corona Radio & Television Corp., In re, 7 Cir. 102 F. 2d 959 | 6 |
| Elless Co., In re, 6 Cir. 174 F. 2d 925 | 7 |
| Flatbush Ave.-Nevins St. Corp., In re, 2 Cir. 133 F. 2d 760 | 6 |
| Hoe & Co., Inc., In re, D.C. N.Y., 93 F. Supp. 762 Affd. 2 Cir. 186 F. 2d 716 | 7 |
| Kline v. Burke Constr. Co., 260 U.S. 226 | 7 |
| Leight & Co., In re, 7 Cir., 139 F. 2d 313 | 6 |
| North American Car Corp. v. Peerless W. & V. Mach. Corp., 2 Cir. 143 F. 2d 938 | 7 |
| Oils Inc. v. Blankenship, 10 Cir. 145 F. 2d 354 | 7 |
| President Realty Co., In re, D.C. N.J. 67 F. Supp. 390 | 7 |
| Prudence Bonds Corp. v. City Bank Farmers Tr. Co., 2 Cir. 186 F. 2d 525 | 6 |
| Sherland Bldg. Corp., In re, D.C. Ind. 29 F. Supp. 985 | 7 |
| Toucey v. New York Life Ins. Co., 314 U.S. 118 | 7 |
| Volland, In re, 7 Cir. 83 F. 2d 680 | 7 |

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

**No. 571**

HARRY I. MATTSON, CHARLES V. WELLNER and WILLIAM A. KAFFER, Individually and as Trustees Under and by Virtue of the Terms and Provisions of the Decree of the District Court of The United States for the Northern District of Illinois, Eastern Division,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, and WALSH OIL COMPANY, INCORPORATED, a Corporation,

*Respondents.*

On Petition for a Writ of Certiorari to the United States Court of Appeals For the Seventh Circuit.

## BRIEF FOR THE RESPONDENTS IN OPPOSITION.

### OPINION BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit (R. 156-161) was entered on November 26, 1952, and is reported at 200 F. 2d 351.

### JURISDICTION.

The Judgment of the Court of Appeals (R. 162) was entered November 26, 1952. A petition for rehearing (R.

163-178) was denied January 13, 1953 (R. 187). The jurisdiction of this Court is invoked under 28 U.S.C., Section 1254 (1) (62 Stat. 928).

## QUESTION PRESENTED.

Respondents are the beneficial owners of a substantial majority of the issued and outstanding voting trust certificates of a corporation, the reorganization of which under Section 77B of the Bankruptcy Act was completed in 1940. Respondents brought suit in 1952 in the Illinois Courts against petitioners who are the remaining voting trustees (two other voting trustees having resigned in disagreement with petitioners) seeking an accounting and other related and appropriate relief. Did the District Court and Court of Appeals err in refusing to enjoin the State Court proceedings?

## STATUTES INVOLVED.

The Statutes involved are set forth in the Appendix, *Infra* pp. 1a-2a.

## STATEMENT OF FACTS.

The petitioners seek a writ of certiorari to review the judgment of the Court of Appeals for the Seventh Circuit affirming an order of the District Court dismissing for want of jurisdiction their complaint to enjoin a suit brought by respondents in the Circuit Court of Will County, Illinois, in 1952, against an Illinois corporation, its officers, directors, and the trustees under a voting trust in which all the shares of the corporation were deposited in 1940 pursuant to a Section 77B bankruptcy reorganization. (R. 93-95)

Respondents are the registered owners of 6,727, or more than 68% of a total of 9,905 issued and outstanding Voting

Trust Certificates with respect to the First Preferred shares of James G. Heggie Manufacturing Company, an Illinois corporation, 19,867-¾, or approximately 96% of a total of 20,704-¼ issued and outstanding Voting Trust Certificates with respect to Second Preferred shares of such corporation and 11,216, or more than 76% of a total of 14,-600 issued and outstanding Voting Trust Certificates with respect to the Common shares of such corporation. (R. 41)

Petitioners Mattson, Wellner and Kaffer are the remaining acting trustees under a voting trust (R. 41) with respect to the shares of such corporation established pursuant to the plan of reorganization in proceedings under Sections 77A and 77B of the Bankruptcy Act of the United States, (R. 6) which reorganization proceedings were terminated and finally closed by a decree entered September 27, 1940, by Judge Igoe. (R. 26-38) That decree, after extensive findings to the effect that the plan of reorganization had been "fully executed, carried out, accomplished, and finally consummated" provided, in Paragraph (8) thereof:

> "That this case entitled 'In the Matter of James G. Heggie & Sons, a corporation, Debtor, Proceedings for Reorganization under Sections 77A and 77B, Case No. 56598' be and the same is hereby terminated and finally closed." (R. 37)

The new corporation thereupon assumed the conduct of the business and has operated it for more than twelve years without any reports or reference to the Bankruptcy Court and without petitioners being subjected to the administration of that court in any way.

The other trustees, James W. Barr, a member of the Joliet Bar, and Dr. E. J. Stephen, resigned as trustees and directors and Mr. Barr also resigned as counsel for

the trustees and the corporation, on January 8 and 10, 1952, respectively, because of their disagreement with the manner in which Plaintiffs were conducting the affairs of the corporation. (R. 57)

On January 28, 1952, at a time when no proceedings in any court were pending between the parties, respondents filed suit in the Circuit Court of Will County, Illinois, alleging acts of waste, mismanagement of the corporation's affairs and fraudulent conduct by its officers, directors and voting trustees, all of which occurred after entry of the final order of September 27, 1940. The complaint seeks the usual and customary relief in such actions. (R. 39-66)

Under date of February 11, 1952, petitioners filed suit in the United States District Court for the Northern District of Illinois, Eastern Division, seeking and moving for an injunction against the further prosecution of the State Court action, but did not seek to remove the action from the State Court to the Federal Court. (R. 3-15) Respondents, under date of February 15, 1952, filed a motion to dismiss both the complaint and the motion for an injunction, on the ground that the Federal District Court was without jurisdiction. (R. 25)

Under date of April 15, 1952, the District Court entered an order denying plaintiffs' motion for an injunction and granting defendants' motion to dismiss the action, (R. 95) from which order petitioners appealed to the Court of Appeals for the Seventh Circuit. (R. 96) On November 26, 1952, the Court of Appeals affirmed. (R. 156-162).

## SUMMARY OF ARGUMENT.

1. The decision of the court below is consistent with its own prior decisions and those of every other Court of Appeals which has considered the same question.

2. The court below correctly held that the District Court was without jurisdiction to enjoin the State Court proceedings.

3. The decision of the court below recognizes the comity between the Federal and State Courts and is consistent with numerous decisions of this Court on the subject.

## ARGUMENT.

The court below correctly held that the District Court was without jurisdiction to enjoin the State Court proceedings brought by Respondents to require Petitioners to account for their conduct of the corporate affairs. In so deciding, the court below followed its own prior decision in the case of *In re Leight & Co.*, 7th Cir., 139 F. 2d 313, in which, as the Court pointed out in its opinion (R. 159), the issues and the relief sought in the State Court proceedings were substantially the same as in the instant case.

The same question of whether a bankruptcy Court has continuing jurisdiction after the entry of the final decree in a reorganization proceedings was also involved in two other decisions of the Court of Appeals for the 7th Circuit, *In rc Argyle-Lake Shore Corporation*, 98 F. 2d 372, and *In re Corona Radio and Television Corporation*, 102 F. 2d 959.

The decision of the court below in the instant case and in the other cited cases is also consistent with those of several other Courts of Appeals. The Court of Appeals for the Second Circuit, for example, has had the same question before it on several occasions and in every instance has held that the District Court has no authority to enjoin subsequent State Court proceedings even though the judgment in such proceedings might have the direct or indirect effect of modifying the reorganization plan. See *In re Ambassador Hotel Corporation*, 124 F. 2d 435; *In re Flatbush Ave.-Nevins St. Corp.*, 133 F. 2d 760.

Similarly to the effect that the final decree or order terminates the Bankruptcy Court's jurisdiction over a reorganized corporation, see *Prudence-Bonds Corp. et al.*

v. *City Bank Farmers Trust Co.*, 2 Cir., 186 F. 2d 525; *In re Elless Co.*, 6 Cir., 174 F. 2d 925; *North American Car Corporation* v. *Peerless Weighing and Vending Mach. Corporation*, 2 Cir., 143 F. 2d 938; *In re Hoe and Company, Inc.*, D. C. N.Y., 93 F. Supp. 762, affd. 186 F. 2d 716 (CCA 2); *In re Volland*, 7 Cir., 83 F. 2d 680; *Oils, Inc.* v. *Blankenship*, 10 Cir., 145 F. 2d 354; *In re President Realty Co., Inc.*, D. C. N. J., 67 F. Supp. 390; *In re Sherland Building Corporation*, D. C. Ind., 29 F. Supp. 985.

There are no decisions of any Court of Appeals to the contrary. Petitioners have cited, as they did in the Court below, a large number of decisions purporting to support the proposition that a Bankruptcy Court has jurisdiction to enjoin State Court proceedings in which relief is sought pursuant to State Laws with respect to matters involving the internal affairs of a reorganized corporation and arising subsequent to the final order in bankruptcy. None of the cases cited by petitioners is in fact relevant but all deal instead with the authority of the Bankruptcy Court either (a) to enjoin State Court actions brought during the pendency of the bankruptcy proceedings or before consummation of the reorganization plan or entry of the final order closing the reorganization proceedings, or (b) to enforce the discharge in bankruptcy by enjoining State Court actions in which an effort is made to pursue rights which were determined in the bankruptcy proceedings.

The question of the relationship between the Federal and State Courts is of course basic to our federal system. However, the principle that State and Federal Courts are of equal rank and that therefore a Federal Court may not enjoin State Court proceedings in the absence of unusual circumstances is established beyond debate. *Kline* v. *Burke Constr. Co.*, 260 U. S. 226; *Toucey* v. *New York Life Ins. Co.*, 314 U. S. 118, at pp. 134-136.

In this connection it is to be noted that Title 28 U.S.C.A. Section 2283 (Appendix p. 2a) specifically denies the authority of a Federal Court to issue injunctions except as expressly authorized by act of Congress or where necessary in aid of its jurisdiction or to protect or effectuate its judgments. No act of Congress specifically authorizes the injunction sought by Petitioners below. No derogation of Federal Court jurisdiction is involved since there was no pending action in the Federal Court at the time the State suit in question was instituted. Finally, the decisions of the various Courts of Appeals previously referred to make it abundantly clear that no question of protecting or effectuating the 1940 decree of the Bankruptcy Court is raised by respondents' 1952 State Court action.

Petitioners' contention with respect to the jurisdiction of the Bankruptcy Court over subsequent litigation involving reorganized corporations would require that the Federal Courts hear all actions against such corporations since, as the various Courts of Appeals have pointed out, any judgment would to a greater or lesser degree affect the ability of the corporation to carry out the reorganization plan. Congress has never indicated any intention that the jurisdiction of the Federal Courts should be that extensive.

In fact, there is so little substance to Petitioners' position, it seems apparent that the principal purpose of their extended Federal Court litigation has been and is to delay their day of accounting and reckoning in the State Court proceedings. Meanwhile, although having no beneficial interest in the reorganized corporation, Petitioners have continued to draw substantial compensation and to mismanage the affairs of the corporation to Respondents' irreparable injury.

## CONCLUSION.

The decision of the court below is consistent with every relevant Court of Appeals decision. It is also consistent with the decisions of this Court with respect to the comity between the Federal and State Courts.

The petition should be denied.

Respectfully submitted,

HUBERT L. WILL,
*Attorney for Respondents.*

NELSON, BOODELL & WILL,
105 S. LaSalle St.,
Chicago 3, Illinois,
Of Counsel.

## APPENDIX.

Title 11 U.S.C.A. Section 11:

(a) The courts of the United States hereinbefore defined as courts of bankruptcy are hereby created courts of bankruptcy and are hereby invested * * * with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in proceedings under this title, in vacation, in chambers and during their respective terms, as they now or may be hereafter held to—

(15) Make such orders, issue such process and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this title; Provided, however, that an injunction to restrain a court may be issued by the judge only;

(b) Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated. May 27, 1938, Chap. 406, Sec. 2, 44 Stat. 662; June 22, 1938, Chap. 575, Sec. 1, 52 Stat. 842.

Title 11 U.S.C.A. Section 511:

Where not inconsistent with the provisions of this chapter, the court in which a petition is filed shall, for the purposes of this chapter, have exclusive jurisdiction of the debtor and its property wherever located. July 1, 1898, Sec. 111, as added June 22, 1938, c. 575, Sec. 1, 52 Stat. 884.

Title 28 U.S.C.A. Section 1651:

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appro-

priate in aid of their respective jurisdictions and agreeable to the usages and principles of law. June 25, 1948, c. 646, 62 Stat. 944, amended May 24, 1949, Sec. 90, 63 Stat. 102.

Title 28 U.S.C.A. Sec. 2283:

A court of the United States may not grant an injunction to stay proceedings in a State Court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments. June 25, 1948, c. 646, 62 Stat. 968.

15

Office - Supreme Court, U.S.
FEB 28 1953
HAROLD B. WILLEY, Clerk

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

## No. 571

HARRY I. MATTSON, CHARLES V. WELLNER AND WILLIAM A. KAFFER, INDIVIDUALLY AND AS TRUSTEES UNDER AND BY VIRTUE OF THE TERMS AND PROVISIONS OF THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, AND WALSH OIL COMPANY, INCORPORATED, A CORPORATION,

*Respondents.*

## REPLY TO ANSWER TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

JAMES E. MARKHAM,
JAMES W. FAULKNER,
JEREMIAH BUCKLEY,
THOMAS P. FAULKNER,
*Attorneys for Petitioners.*

THE BUNTHORP-WARREN PRINTING COMPANY, CHICAGO

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1952.

---

**No. 571.**

---

HARRY I. MATTSON, CHARLES V. WELLNER AND WILLIAM A. KAFFER, INDIVIDUALLY AND AS TRUSTEES UNDER AND BY VIRTUE OF THE TERMS AND PROVISIONS OF THE DECREE OF THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION,

*Petitioners,*

*vs.*

BELLE HEGGIE BIRKETT, JANET HEGGIE GUNDER, VIRGINIA HEGGIE WUNDER, A. F. SCHUPP, EDWARD J. WALSH, ARNOLD J. HARTMAN, AND WALSH OIL COMPANY, INCORPORATED, A CORPORATION,

*Respondents.*

---

## REPLY TO THE RESPONDENTS' ANSWER TO THE PETITION FOR A WRIT OF CERTIORARI.

---

We shall not take the time of this Court by repeating what we have already argued in the brief in support of our Petition herein, but we do want to call the Court's attention to a few matters urged by the respondents in their Answer.

*First.* When does the jurisdiction of the District Court end over the reorganized corporation? When the decree of reorganization is entered the jurisdiction of the District

Court ends for the purpose of the *reorganization,* but continues for the purpose of protecting its decree, for preventing interference with the plan of reorganization and to aid in its fulfillment. The respondents, as suits their convenience, has the jurisdiction of the court end *for all purposes* upon the signing of the decree of reorganization. By this device, all proceedings arising after the entry of the decree of reorganization would be excluded on the ground of the lack of jurisdiction in the District Court to entertain any suit that aims at protecting the decree or aiding in its enforcement. The suit for an injunction filed by the petitioners was brought, of course, after the decree of reorganization was entered, and invokes the jurisdiction of the District Court to protect the decree it has entered.

*Second.* What was the purpose of the State action filed by the respondents? The respondents herein very carefully avoid informing the Court what the purpose of that suit was, by merely stating that the complaint in that case alleged acts of waste and mismanagement by the officers and directors and voting trustees of the reorganized corporation, and then the respondents say that the complaint sought "the usual and customary relief in such actions." They are careful not to state what is the "usual and customary relief." They do not inform the Court that the relief sought is the removal of the trustees, directors and officers, the termination of the trust, the distribution of the assets, and the appointment of a receiver for the reorganized corporation. The assertion of that relief brought us into the Federal District Court for an injunction, on the ground that the granting of such relief would nullify the Federal decree in bankruptcy, and it is that relief which the District Court and the Circuit Court of Appeals, by their decisions, permits the respondents to obtain.

Our brief sets forth the uniform current of authority that it is the duty of the District Court to restrain any

action which seeks to substitute for its decree, a new plan created by individuals or by a State Court, or which seeks to interfere with the plan created and confirmed by the District Court in a bankruptcy matter. We have presented in our Brief in support of this Petition the uniform current of authority supporting the right, power and duty of the District Court to stay a State suit that aims at nullifying the decree of the District Court in a reorganization case in bankruptcy, and have distinguished the two or three cases relied on by the respondents, that have even the remotest bearing on the subject.

The respondents in their Answer state that we did not seek to remove the action into the Federal Court. They seem to forget the fact that it was they who brought an action in the District Court making the same charges and seeking the same relief sought in the State Court, which suit was litigated on the pleadings for over a year; that when the date was set for a final hearing and determination on the merits, they dismissed their case, and within six weeks thereafter began all over again with the same charges in the State Court. (Page 3 of our Petition filed herein.) We might with much greater justification, and much more pointedly ask the respondents, why they did not pursue their case in the District Court when it was set for trial.

The respondents attempt to leave the inference that Barr and Stephens resigned as Trustees of the reorganized corporation because of the mismanagement of the corporation by the majority of the trustees. The respondents themselves have furnished the real answer to the question of their resignation, when they alleged in the complaint filed in the State Court the following:

> "Said informal understanding was thereupon reduced to writing and executed by plaintiffs, Schupp and Hartman (two of the respondents herein) on their

own behalf and on behalf of all other parties plaintiff (respondents herein) and delivered to James A. Barr, then acting as a voting Trustee and director of Corporate Defendant, as well as counsel for the voting trustees and Corporate Defendant.

"At a meeting of the directors of the Corporate Defendant held January 2, 1952 the aforesaid written agreement was considered by the defendants, Mattson and Wellner and James A. Barr and Dr. Elmer J. Stephens who were duly acting voting trustees and directors of the corporate defendant. Mr. Barr moved that the agreement be entered into and that the directors recommend to the voting trustees that such agreement did in effect carry out the provisions of the decree of the United States District Court pursuant to which the voting trust was created and that it should therefore likewise be entered into by the voting trustees. Upon a formal vote being taken defendants, Mattson and Wellner (petitioners herein) voted against entering into such formal agreement and Messrs. Barr and Stephens voted for doing so. Defendant Kaffer (Petitioner herein) was not present at said meeting of January 2.

"Subsequently, under date of January 7, 1952, a second formal meeting of the Board of directors was held at which the same four directors, namely defendants Mattson and Wellner and Messrs. Barr and Stephens were present, at which meeting defendants Mattson and Wellner again refused to carry out the informal agreement previously made by them. Thereupon, Messrs. Barr and Stephens tendered their resignation as voting trustees and directors and the said James W. Barr also resigned in his capacity as attorney for said voting trustees and directors and as attorney for the Corporate Defendant." (R. 56-57.)

It will be seen therefore that the "informal agreement" referred to by the respondents, was not an agreement at all but merely an offer by the respondents herein to take over the reorganized corporation, which offer was rejected by

the petitioners herein as outside the powers of the trustees, and as a violation of the decree of the District Court under which the petitioners herein were appointed and were functioning. The refusal of the petitioners to turn over the reorganized corporation lock, stock and barrel to Mr. Schupp and the other respondents herein, was the "mismanagement" on the part of the trustees of which the respondents herein complained. When the trustees refused to be derelict in their duty to the trust reposed in them by the Court that appointed them, the respondents sought to do by litigation, what they could not do by inducing the petitioners to violate their trust.

## Conclusion.

While the charges made by the respondents in their State Court suit have never been supported by one iota of evidence, the validity of those charges may be gauged by the fact, that after the respondents made these charges, and after they represented the corporation as being in dire need of proper administration, they nevertheless ran out into the highways and byways, purchasing certificates of beneficial interest in this corporation which they charged had been so woefully mismanaged by the petitioners.

We respectfully submit that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JAMES E. MARKHAM,
JAMES W. FAULKNER,
JEREMIAH BUCKLEY,
THOMAS P. FAULKNER,
*Attorneys for Petitioners.*